

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE GOOGLE INC. COOKIE)	Case No. 12-MD-2358 (SLR)
PLACEMENT CONSUMER PRIVACY)	
LITIGATION)	
)	
)	
This Document Relates to:)	
ALL ACTIONS)	
)	

**DECLARATION OF JAMES P. FRICKLETON IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

**BARTIMUS, FRICKLETON,
and ROBERTSON, P.C.**

James P. Frickleton
Mary D. Winter
Edward D. Robertson, Jr.
11150 Overbrook Road, Suite 200
Leawood, KS 66211
Tel: 913-266-2300
jimf@bflawfirm.com

Executive Committee Member

**SILVERMAN THOMPSON SLUTKIN
WHITE**
Stephen G. Grygiel (DE Bar ID 4944)
201 N. Charles Street, 26th Floor
Baltimore, MD 21201
Tel: 443-909-7516
sgrygiel@mdattorney.com

Executive Committee Member

STRANGE & BUTLER LLP
Brian Russell Strange
12100 Wilshire Blvd., Suite 1900
Los Angeles, CA 90025
Tel: 310-207-5055
bstrange@strangeandbutler.com

Executive Committee Member

I, James P. Frickleton, having first been duly sworn, declare:

1. I am a partner in the law firm of Bartimus, Frickleton and Robertson, P.C., one of the lead counsel appointed by the Court in this MDL and a member of the Executive Committee in this case. This declaration is based on my own personal knowledge and if called to testify, I could and would competently testify hereto under oath.

2. This declaration is submitted in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement with Defendant Google Inc. ("Google") for certification of a settlement class and for the appointment of Plaintiffs Jose M. Bermudez, Nicholas Todd Heinrich, and Lynn Krause as Class Representatives for the Settlement Class and for the appointment of class counsel to represent the Settlement Class.

3. A true and correct copy of the signed Settlement Agreement between Plaintiffs and Google has been attached to the declaration of my co-counsel Brian R. Strange. As part of that Settlement Agreement, Google has agreed to a Settlement Fund of \$5,500,000.00 to be distributed to a designated *cy pres* recipients after payment of costs related to the Agreement, including the expenses of the Settlement Administrator, the Notice Plan, Incentive Awards, the Fee Award, and any other administrative expenses and fees in connection with the Agreement.

4. The parties held a mediation in this case on May 9, 2016 before retired Federal Judge Layn Phillips. During the mediation, the parties agreed to the basic terms of the settlement. The settlement was reached following arms-length negotiations considering the history of the case, the liability and damage potential, and the risks of future litigation.

5. Given the size of the potential class and the issues involved, the parties believe that the distribution of the Settlement Fund to six *cy pres* recipients who will agree to use the funds to promote public awareness and education and/or support research, development, and

initiatives related to the security and/or privacy of Internet browsers is the best use of the settlement proceeds.

6. In addition, Google will provide Class Counsel with assurances that it implemented systems configured to instruct Safari web browsers to expire any cookie placed from the doubleclick.net domain by Google if those systems encountered such a cookie, with the exception of the doubleclick opt-out cookie, until the time that all cookies places from the doubleclick.net domain by Google on Safari web browsers through February 15, 2012 should have expired by design.

7. Although Plaintiffs' counsel intend to present strong evidence that Google's cookie circumvention technique violated California common law and that this case should be certified as a class action and that such class should be entitled to damages, we understand that Google will be prepared to mount a vigorous defense on these issues. Given the risks and uncertainties of litigation, class counsel believe that this settlement provides meaningful benefits to the Class and is reasonable. Counsel have considered the fact that Google has already made substantial payment of approximately \$39,500,000.00 to the Federal Trade Commission in various state governments arising under the same conduct alleged by Plaintiffs.

8. On November 16, 2012, this Court appointed my firm as one of the lead counsel in this MDL pursuant to Rule 23(g)(3) of the Federal Rules of Civil Procedure. In doing so, the Court noted our firm's "experience in large class actions and with substantial privacy rights litigation," our "impressive credentials and the underlying qualifications to serve as lead counsel," and we have served as co-lead counsel in this case since that time.

9. The Court's file reflects the experience in complex civil and class action litigation that gave rise to my firm's appointment as co-lead counsel in this case and I will not repeat it

here. However, that experience leads me to conclude that this proposed settlement is fair and reasonable should be preliminarily approved.

10. Attached hereto as Exhibit A is my firm's resume.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 29th day of August, 2016, at Leawood, Kansas, 66211.

/s/ James P. Frickleton

EXHIBIT A

BARTIMUS, FRICKLETON & ROBERTSON, P.C.

Since its beginning over twenty-five years ago, Bartimus, Frickleton & Robertson, P.C. (“BFR”) has devoted itself to complex, often high stakes litigation. From mass torts to class actions, from professional negligence to products liability, from railroad crossing and aviation cases to the prosecution of drug injury cases, the firm has served its clients with lawyers devoted to excellence in representation of those who entrust their legal matters to us.

The firm’s class action practice has resulted in BFR lawyers accepting leadership responsibility for multiple types of class actions. BFR is currently serving as co-lead counsel in *In re Google Inc. Cookie Placement Consumer Privacy Litigation*, Case No. 12-MD-2358 SLR pending before the United States District Court for the District of Delaware and has served as co-lead counsel and a member of the PSC in *In re Facebook Internet Tracking Litigation*, Case No. 5:12-md-02314 EJD pending before the United States District Court for the Northern District of California, San Jose Division.

BFR is also currently serving as class counsel in *Freeman v. Hawthorn Bank*, Case No. 1016-CV35061 pending in the Circuit Court of Jackson County, Missouri and *Scarey v. Great Southern Savings and Loan*, Case No. 1031-cv17327, pending before the Circuit Court of Greene County, Missouri, both of which seek damages for charges made by defendants for overdraft fees in excess of Missouri’s usury limit.

BFR has also led class actions involving claims of consumer fraud by cell phone companies, damage to real estate from hydrocarbon spills, illegal hotel energy surcharges, faulty air bag installations by General Motors and hospital overcharges of the medically indigent.

Along the way, the firm has been acclaimed as one that fights hard but fairly. Our work has earned us the respect of our opponents, so much so that a major insurance company asked

that BFR represent them in class action litigation and a major materials company asked that BFR participate in major tort and injunctive litigation.

Representative Litigation:

In re AT&T Mobility Sales Tax Litigation. BFR was appointed lead counsel in this consolidated case before the Honorable Amy St. Eve, District Judge for the Northern District of Illinois. In the summer of 2010 the firm presented a proposed settlement of the case to Judge St. Eve, which was ultimately given final approval in August of 2011 and resulted in a cooperative effort between the Settlement Class and AT&T Mobility to seek recovery of over \$1.1 Billion in sales and other taxes that were remitted to some 1200 taxing jurisdictions throughout the United States and its territories. In addition, the settlement resulted in the cessation of the collection of the taxes in question which represented a present value to the Settlement Class of over \$2 Billion.

MBA Surety v. AT&T Mobility. BFR was appointed lead counsel in this case by the Honorable David Dowd, Circuit Judge for the 22nd Judicial Circuit Court of Missouri in the City of St. Louis. BFR represented a class of AT&T Mobility customers who were seeking to recover alleged improper Universal Service Charges on their monthly bills. BFR negotiated a \$152 million settlement, which consisted of the entire amount of the claimed overcharges that was approved by the Court in 2013.

In re Facebook Internet Tracking Litigation. The Honorable Edward Davila of the United States District Court for the Northern District of California, San Jose Division, appointed BFR to serve as co-lead counsel for the putative class in this Internet Privacy litigation in which the Plaintiffs' have alleged that Facebook illegally tracked its users after they had logged out of Facebook in contravention of Facebook's assurances that it was not engaging in such conduct. The case is still in the pleadings stage.

In re Google Inc. Cookie Placement Consumer Privacy Litigation. The Honorable Sue Robinson of the United States District Court for the District of Delaware has appointed BFR to serve as co-lead counsel for the putative class in this Internet Privacy litigation. The plaintiffs in this case allege that Google utilized computer code to trick and bypass the web browsers of Safari users in order to circumvent those browsers' default "do not track" settings.

State of Missouri ex rel. Nixon v. American Tobacco Co. In 1998, the Attorney General of Missouri chose BFR to act as the lead firm for both the motions and appellate practice and all medical aspects of the tobacco litigation by which the State of Missouri sought recovery for its damages resulting from the sale of tobacco products to Missouri's citizens. The case resulted in a settlement in which Missouri will receive \$6.4 billion.

Rodriguez v. Hogan Transp., Inc. The firm received a \$46 million verdict on behalf of the families of two persons killed in a truck collision. The verdict is the largest wrongful death verdict not involving punitive damages in Missouri's history.

Blando v. Nextel. The firm served as co-lead counsel for class action alleging Nextel's improper collection of a so-called federal program cost recovery fee falsely designated as a tax on bills to customers. Value of settlement exceeded \$225 million.

Benney v. Sprint. Firm served as co-lead counsel in class action against Sprint for improper collection of E-911, wireless number portability and telephone number pooling charge. Settlement valued at more than \$250 million.

Class Actions for Uninsured Hosp. Patients. Co-lead counsel in class actions filed in California and Missouri against charitable hospitals that overcharged uninsured patients. The nearly \$300 million in settlements resulted in wholesale modification of the hospitals' charitable care policies and refunds to persons who had overpaid on their hospital bills.

Hudspeth v. Lake Quivira. \$20 Million verdict for victim of an accident at a residential lake community who was rendered quadriplegic while diving into the lake

Clement v. Hammons Hotels, Inc. Regional class action on behalf of persons improperly charged an energy surcharge as guests of Hammons Hotels. Firm served as co-lead counsel. Settlement valued at \$10 million.

Fen-Phen Litigation. Firm represented over 2,000 people injured as a result of the use of this diet drug.

Average Wholesale Price Litig. The Firm represents the State of Kansas in this litigation charging drug companies with overcharging Medicaid recipients for drugs and other healthcare related devices. To date settlements totaling in excess of \$60 million have been secured and are prosecuting approximately 10 additional cases.

September 11 Airline Litig. Firm served as part of the team representing airline victims of the September 11 terrorist attacks.

Courtney Pharm. Litig. Firm represented and obtained settlement from drug manufacturers for over 50 clients who had received diluted chemotherapy drugs from pharmacists. Settlement for all victims exceeded \$60 million.

Ford v. General Motors. Co-lead counsel in breach of warranty claims against General Motors for improper design of airbag system in certain P-90 platform vehicles.

All told, the value of the firms' verdicts and settlements in class action, personal injury and medical malpractice actions exceed \$4 billion.